

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 EASTERN DISTRICT OF PENNSYLVANIA

4 SHANTÉ C. DASH,)

5 Plaintiff)

6 v.)

7 NCO FINANCIAL SYSTEMS, INC.,)

8 Defendant)

Case No.:

COMPLAINT AND DEMAND FOR
JURY TRIAL

(Unlawful Debt Collection Practices)

10 **COMPLAINT**

11 SHANTÉ C. DASH ("Plaintiff"), by and through her attorneys, KIMMEL &
12 SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC.
13 ("Defendant"):

15 **INTRODUCTION**

16 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
17 U.S.C. § 1692 *et seq.* ("FDCPA").

18 **JURISDICTION AND VENUE**

19 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
20 that such actions may be brought and heard before "any appropriate United States district court
21 without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original
22 jurisdiction of all civil actions arising under the laws of the United States.

23 3. Defendant has its corporate headquarters in the Commonwealth of Pennsylvania
24 and as such, personal jurisdiction is established.

25 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

PARTIES

5. Plaintiff is a natural person residing in Philadelphia, Pennsylvania.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

7. Also, Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. §1692k(a) and Wenrich v. Cole, 2000 U.S. Dist LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant is a national debt collection company with its corporate headquarters located at 507 Prudential Road, Horsham, Pennsylvania 19044.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

11. At all pertinent times hereto, Defendant was hired to collect a consumer debt and attempted to collect that debt from Plaintiff.

12. The debt arose out of transactions that were primarily for personal, family, or household purposes.

13. Beginning in September 2011, and continuing through December 2011, Defendant continuously and repeatedly contacted Plaintiff on her work telephone seeking and demanding payment for an alleged debt owed to PECO.

14. Defendant contacted Plaintiff everyday, calling, on average, one (1) to two (2) times a day during the relevant period.

15. In those instances where Plaintiff did not answer the telephone, Defendant left voicemail messages on her work telephone seeking and demanding payment of the alleged debt.

18. The alleged debt Defendant sought to collect from Plaintiff was for a utility bill, which Plaintiff paid in full several years ago.

20. Upon information and belief, Defendant contacted Plaintiff on a repetitive and continuous basis with the intent of harassing Plaintiff into paying this debt.

21. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

PLAINTIFF'S COMPLAINT

1 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
2 2002).

3 23. The FDCPA is to be interpreted in accordance with the “least sophisticated”
4 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
5 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
6 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for
7 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
8 and the fact that a false statement may be obviously false to those who are trained and
9 experienced does not change its character, nor take away its power to deceive others less
10 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it
11 ensures protection of all consumers, even naive and trusting, against deceptive collection
12 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
13 collection notices. Clomon, 988 F. 2d at 1318.

15 **COUNT I**
16 **DEFENDANT VIOLATED THE**
17 **FAIR DEBT COLLECTION PRACTICES ACT**

18 24. In its actions to collect a debt, Defendant violated the FDCPA in one or more of
19 the following ways:

- 20 a. Defendant violated the FDCPA generally;
- 21 b. Defendant violated §1692c(a)(1) of the FDCPA when it communicated with
22 Plaintiff at a time or place that it knew or should have known was
23 inconvenient;
- 24 c. Defendant violated §1692d of the FDCPA when it harassed, oppressed or
25 abused Plaintiff in connection with the collection of a debt;

- 1 d. Defendant violated §1692d(5) of the FDCPA when it caused Plaintiff's phone
2 to ring repeatedly or continuously with the intent to annoy, abuse, or harass
3 Plaintiff;
4 e. Defendant violated §1692e of the FDCPA when it used false, deceptive or
5 misleading representations or means in connection with the collection of a
6 debt; and
7 f. Defendant violated §1692f of the FDCPA when it used unfair and
8 unconscionable means in connection with the collection of a debt.
9

10 WHEREFORE, Plaintiff, SHANTÉ C. DASH, respectfully prays for a judgment as
11 follows:


- 12 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
13 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
14 15 U.S.C. § 1692k(a)(2)(A);
15 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
16 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
17 d. Any other relief deemed appropriate by this Honorable Court.
18

19 **DEMAND FOR JURY TRIAL**

20 PLEASE TAKE NOTICE that Plaintiff, SHANTÉ C. DASH, demands a jury trial in this
21 case.
22
23
24
25

RESPECTFULLY SUBMITTED,

Date: 1-17-12

By: 
CRAIG THOR KIMMEL
Attorney ID No. 57100
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888
Fax: (877) 788-2864
Email: kimmel@creditlaw.com